



COUNTY OF LOS ANGELES

CLAIMS BOARD

500 WEST TEMPLE STREET

LOS ANGELES, CALIFORNIA 90012

MEMBERS OF THE BOARD

September 15, 2003

Maria M. Oms
Auditor-Controller
Lloyd W. Pellman
Office of the County Counsel
Rocky Armfield
Chief Administrative Office

Honorable Board of Supervisors
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Re: **Diego Delgado Hernandez, a minor by and through his
Guardian Ad Litem, Olga Delgado-Hernandez, Olga Delgado-
Hernandez, Candido Hernandez v. County of Los Angeles**
Los Angeles Superior Court Case No. PC 027 485

Dear Supervisors:

The Claims Board recommends that:

1. The Board authorize settlement of the above-entitled action in the amount of \$1,500,000.00, plus assumption of the Medi-Cal Lien not to exceed \$51,601.91.
2. The Auditor-Controller be directed to draw warrants to implement this settlement from the Department of Health Services.

Enclosed is the settlement request and a summary of the facts of the case.

The Litigation Report, including the Corrective Action Report, is being transmitted to you under separate cover by the Department of Health Services.

Return the executed, adopted copy to Frances Lunetta, Suite 648 Kenneth Hahn Hall of Administration, Extension 4-1754.

Very truly yours,

Maria M. Oms, Chairperson
Los Angeles County Claims Board

MMO/fsl

Enclosure

MEMORANDUM

August 28, 2003

TO: LOS ANGELES COUNTY CLAIMS BOARD

FROM: GEORGE E. PETERSON, Esq.
Bonne, Bridges, Mueller, O'Keefe & Nichols

OWEN L. GALLAGHER
Principal Deputy County Counsel

RE: Diego Delgado Hernandez, a minor by and through his Guardian Ad Litem, Olga Delgado-Hernandez, Olga Delgado-Hernandez, Candido Hernandez v. County of Los Angeles
Los Angeles Superior Court Case No. PC027485

DATE OF
INCIDENT: June 26, 2000.

AUTHORITY \$1,500,000, Plus Assumption of the Medi-Cal Lien Not to Exceed
REQUESTED: \$51,601.91

COUNTY
DEPARTMENT: DEPARTMENT OF HEALTH SERVICES

CLAIMS BOARD ACTION:

☐

Approve

☐

Disapprove

☐

Recommend to Board of
Supervisors for Approval

_____, Chief Administrative Office
ROCKY A. ARMFIELD

_____, County Counsel
LLOYD W. PELLMAN

_____, Auditor-Controller
MARIA M. OMS

on _____, 2003

SUMMARY

This is a recommendation to settle for \$1,500,000 the medical negligence lawsuit brought by Diego Hernandez for the injuries he sustained during his birth at Olive View/UCLA Medical Center on June 26, 2000. The State, having paid \$51,601.91 for the provision of Medi-Cal care, has a claim for reimbursement, which will be settled by the County. The mother, Olga Delgado-Hernandez, has a separate cause of action for emotional distress, which is also being resolved by this settlement.

LEGAL PRINCIPLES

The County is liable for the failure of its hospital and medical staff to provide services consistent with the appropriate standard of care for the circumstances encountered.

SUMMARY OF FACTS

On June 25, 2000, at about 4:00 a.m., Olga Delgado-Hernandez, a 20-year-old woman, pregnant with her first child, and at 39 and 6/7 weeks gestation, was seen in the Emergency Room of Olive View/UCLA Medical Center with complaints that the membranes enveloping the fetus and containing the amniotic fluid had ruptured. At 5:10 a.m., she was admitted to the labor and delivery unit for the process of inducing labor through the administration of medication (Pitocin).

At about 6:00 p.m., medical personnel determined that Olga Delgado-Hernandez's cervix was completely dilated, and she was encouraged to push with each contraction to assist in the delivery process. However, labor progressed slowly, and Olga Delgado-Hernandez was unable to adequately push with each contraction. Therefore, shortly before midnight, a decision was made to deliver the fetus with the assistance of a surgical instrument inserted into the vagina and used to grasp and pull the fetus out of the birth canal (forceps).

On June 26, 2000, at 12:05 a.m., Olga Delgado-Hernandez was taken to the operating room. At 12:51 a.m., 12:55 a.m., 12:57 a.m., 12:59 a.m., 1:01 a.m., and 1:03 a.m., medical personnel attempted to grasp and pull the fetus out of the birth canal utilizing forceps. However, attempts to deliver the fetus utilizing forceps were unsuccessful. Excessive use of forceps may result in an injury to the vessels of the neck supplying blood to the brain, leading to areas of dead tissue resulting from a sudden insufficiency of blood supply (infarction) produced by a blockage (occlusion) of a blood vessel due to a blood clot.

At 1:05 a.m., a decision was made to perform a Cesarean section delivery. At 2:14 a.m., Olga Delgado-Hernandez gave birth, by Cesarean section delivery, to Diego Hernandez, a male infant weighing 2,965 grams (6 lbs. 8 oz.). At the time of delivery, it was noted that Diego Hernandez was suffering from a paralysis of the face (facial palsy) on the right side, which medical personnel believed was due to the utilization of forceps in the attempt to deliver the fetus.

Diego Hernandez was transferred to the nursery. However, at 6:50 a.m., he was transferred to the Neonatal Intensive Care Unit (NICU) after experiencing a spontaneous inability to breathe (apnea). Upon admission to the NICU, it was noted that Diego Hernandez had a facial droop on the right side, a thrusting tongue, and an abnormal wrapping of the fingers around the thumb, signs of a possible brain injury. An imaging study generated by computer synthesis of x-ray data (CT scan) indicated that Diego Hernandez was suffering from swelling (edema) of the brain, and areas of infarction on the left side of the brain resulting from an occlusion of a blood vessel.

On June 27, 2000, due to persistent seizures, Diego Hernandez was transferred to UCLA Medical Center (private facility) for continuous monitoring and a study of recorded brain wave activity (electroencephalogram [EEG]).

On June 30, 2000, Diego Hernandez was transferred back to Olive View/UCLA Medical Center. On July 21, 2000, he was discharged.

Diego Hernandez currently suffers from significant developmental delays, mental retardation, and has a defect of motor power and coordination related to damage of the brain (cerebral palsy), which medical experts attribute to an infarction on the left side of the brain resulting from an occlusion of a blood vessel.

DAMAGES

If this matter proceeds to trial, the claimants will likely seek the following:

Diego Hernandez,	
Future Medical and Life Care	\$12,700,000
Loss of Future Earnings	\$ 1,100,000
Pain and Suffering (MICRA limit)	\$ 250,000
Olga Delgado-Hernandez,	
Pain and Suffering (MICRA limit)	\$ <u>250,000</u>
TOTAL	\$14,300,000

The proposed settlement includes:

Diego Hernandez,	
Cash Settlement	\$ 905,350
Olga Delgado-Hernandez,	
Future Wrongful Death	\$ 100,000
Candido Hernandez,	
Future Wrongful Death	\$ 100,000
Attorneys Fees (MICRA Estimate)	\$ 376,650
Costs of Litigation	\$ <u>18,000</u>
TOTAL	\$1,500,000

A portion of the recommended settlement may be directed by claimants to be used to purchase an annuity. The amount and structure of the annuity has not been selected at this time.

STATUS OF CASE

The current trial date has been vacated pending approval of this settlement.

The claimants and the County contended that the injuries to Diego Hernandez were the result of acts and omissions of Allegiance Healthcare (co-defendant), which manufactured the forceps utilized in this case with a softer metal alloy that allowed the forceps to bend out of alignment during use. However, neither the claimants nor the County were able to specifically identify the exact forceps utilized during the attempts to delivery the fetus. Accordingly, the Superior Court ordered Allegiance Healthcare be dismissed from this lawsuit, which now precludes the County from arguing that Diego Hernandez's injuries were attributable to the use of defective forceps.

This matter involved complex medical-legal issues surrounding the care and treatment rendered by medical personnel, including products liability theories against the manufacturer of the forceps utilized in this case. In addition to the normal discovery in such matters, it was necessary to take in excess of 25 depositions, as well as hiring experts in anatomy, neonatology, neuroradiology, neuropsychology, neuropathology, obstetrics and gynecology, pediatric neurology, pediatric hematology, pediatric neurosurgery, perinatology, pathology, life care planning, and economics. In addition, claimants had made a demand to settle this case in excess of \$4,000,000. Due to the inability of the parties to reach a reasonable settlement until only recently, it was necessary for the County to be completely prepared for trial, including all motions, opposition to motions, exhibits, jury instructions, and witness preparation.

Expenses incurred by the County of Los Angeles in the defense of this case through August 18, 2003, are attorneys fees of \$260,075 and \$97,032.19 in costs.

The total cost to the County of Los Angeles, as a result of this settlement, is as follows:

Indemnity (Settlement Amount)	\$1,500,000.00
County Attorneys Fees and Costs	\$ 357,107.19
Medi-Cal Lien	<u>\$ 51,601.91</u>
TOTAL	\$1,908,709.10

EVALUATION

Medical experts will be critical that medical personnel used an excessive number of pulls during their attempt to assist in the delivery of the fetus utilizing forceps. The excessive number of pulls with forceps resulted in excessive trauma to the fetal head, and is directly responsible for the results observed here.

We join with our private counsel, Bonne, Bridges, Mueller, O'Keefe & Nichols, and our claims administrator, Octagon Risk Services, Inc., in recommending settlement in the amount of \$1,500,000, and payment of the Medi-Cal lien in the amount of \$51,601.91.

The Department of Health Services concurs in this settlement.